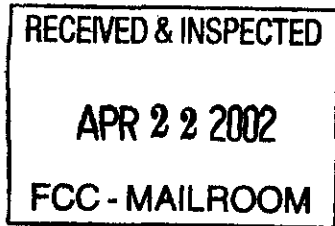


DOCKET FILE COPY ORIGINAL



April 18, 2002

Federal Communications Commission
Office of the Secretary
445 – 12th Street, S.W.
Room TW – A325
Washington, DC 20554

Re: CC Docket Nos. 96-45 and 97-21

In the matter of: USAC-SLC inaccurate classification of certain funding requests as "Recurring Services" rather than "Non-Recurring Services".

To Whom It May Concern:

This letter appeals the USAC-SLC inaccurate classification as "Recurring Services" of certain FRNs for certain Form 471 applicants which are actually for "Non-Recurring Services". We request this review subsequent to receipt of Funding Commitment Letters that have funded the FRNs in question.

Our contact information is as follows:

Tom Traywick, Jr., Vice President for Business Development
Diversified Computer Solutions, Inc.
Service Provider Number: 143005276
115 Atrium Way, Suite 125
Columbia, SC 29223
Telephone: (803) 419-3501 x314
FAX: (803) 419-3505
Email: ttraywick@dcscolumbia.com

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List ABCDE

This letter of appeal is being written on behalf of:

Fairfield County School District
Billed Entity: 127143
1226 US Hwy 321 ByPass
Winnsboro, SC 29180
Telephone: (803) 635-4607
FAX: (803) 635-1899
Email: bwright@fairfield.k12.sc.us
Form 471 Application Number: 0000248519
Funding Request Number: 0000605024
Funding Commitment Decision Letter Date: 03/15/2002 (copy attached)

Enclosures

Please find enclosed (1) a copy of the FCC Form 471 Instructions – October 2000 – Page 21, (2) a copy of the FCC Form 471 Instructions – November 2001 – Page 24, and (3) a copy of our contract with the applicant.

Also enclosed is the Funding Commitment Report page from the Funding Commitment Decision Letter. As you can see, the Funding Commitment Decision Letter was received very late in the funding year.

Impact to the Applicant

FCC Report and Order FCC 01-195 (adopted June 27, 2001) extended the installation deadline for non-recurring services from June 30 to September 30 (paragraph 8), and "limited extension for qualified applicants" of an additional year (paragraphs 12 and 13).

The FRN appealed herein is ineligible for such extension of the installation deadline past the normal June 30, 2001 end of the funding year because the FRNs is classified as "Recurring Services".

Diversified Computer Solutions, Inc.
115 Atrium Way, Suite 125
Columbia, South Carolina 29223
803.419.3501

Grounds for Appeal

Although the services to be provided, under the FRN, are non-recurring services, the applicant followed (to the letter) the instructions for completing the Form 471. The FCC Form 471 Instructions – October 2000 – Page 21 (F. Block 5: Services Ordered, Item 23, Column A) state as follows:

"If you expect to pay a non-recurring charge in multiple installments over the funding year, you should amortize this estimate in Columns A-E and NOT in Columns F-H. **DO NOT** include this amount under both recurring and non-recurring charges."

Those are very clear and unambiguous instructions to put certain non-recurring charges in the recurring charge column. That does not change the fact that the charges are non-recurring charges for non-recurring services. The gravity of this misclassification was not known at the time, but the effect is that the SLC classified by decree when writing the Form 471 instructions.

For erate year 5 (2002-2003) the FCC Form 471 Instructions – November 2001 – Page 24 state as follows:

"If you expect to pay a non-recurring charge in multiple installments over the funding year, you should either amortize this estimate in Columns A-E, or include the full amount of this charge in Columns F-H. **DO NOT** include this amount under both recurring and non-recurring charges. If you amortize this charge in Columns A-E, you will not be eligible for discounts on the non-recurring services provided after June 30 of the funding year"

The change in the FCC Form 471 Instructions – November 2001 – Page 24 above indicate that the problem language had been identified and corrected. But the remedy was too late for this applicant.

The Services Provided

If you examine our contract, you will note that there is no monthly fee, there is no annuity fee component (recurring) or retainer fee component. These services (labor and materials) are provided when and if the District requests them, and on a time and materials basis. If no services are requested during a period, then no charges occur. All of the services provided the applicants under this contract are non-recurring services. Because of financial conditions existing within these districts, work could not begin without an Erate Funding Commitment. Now that funding has been committed, there is not time enough remaining to complete the projects intended.

Diversified Computer Solutions, Inc.
115 Atrium Way, Suite 125
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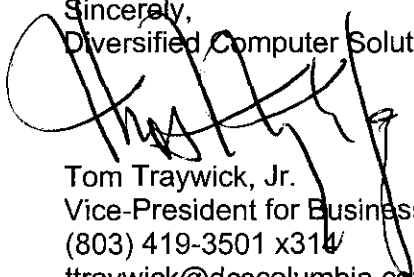
In Closing

This applicant is an economically disadvantaged (86%) Districts which will be unable, through no fault of its own, to complete installation of non-recurring services by June 30, 2002 - particularly those services that can not easily be installed while school is in session.

These applicants are being denied full use of their Erate funding, because there is not time to complete delivery of the support that they had planned under this application. They are being denied this support because they strictly adhered to very clearly stated instructions that required no interpretation, but instructions that were poorly written and reasoned for the purpose intended - instructions that are causing unintended consequences of hardship and inequity.

We all thank you for your kind attention to this matter. Please contact me if you have any questions or need additional information.

Sincerely,
Diversified Computer Solutions, Inc.



Tom Traywick, Jr.
Vice-President for Business Development
(803) 419-3501 x314
ttraywick@dcscolumbia.com

Diversified Computer Solutions, Inc.
115 Atrium Way, Suite 125
Columbia, South Carolina 29223
803.419.3501

Item (22) - Entities receiving this service. For site-specific services that will be provided to one individual entity and not shared by others (for example, a local area network to be installed in one school building), provide the Entity Number of the individual entity receiving that service in **Item (22)(a)**. For shared services used jointly by multiple entities (such as telecommunications services provided to all of the outlets/branches in a library system), list the Block 4 Worksheet Number that shows the sharing entities and calculates the shared discount for this service in **Item (22)(b)**.

Item (23) - Use the step-by-step calculation grid to arrive at the total amount of your funding request. You may round dollar amounts to the nearest dollar, but please use numerals and include all digits. **DO NOT use words such as 1 million**, in place of 1,000,000. Note that if you are seeking support on multi-year contracts, **you may request funding only for that portion of the contract that is delivered in the relevant funding year.**

Use Columns A-E for any *recurring* charges for this service, and Columns F-H for any *non-recurring* charges for this service.

Item (23), Column A: Estimate your total monthly cost for this service. If the cost of service fluctuates from month to month, you might use the average of past bills to estimate the monthly cost.

If you expect to pay a non-recurring charge in multiple installments over the funding year, you should amortize this estimate in Columns A-E and NOT in Columns F-H. **DO NOT** include this amount under both recurring and non-recurring charges.

Item (23), Column B: Enter the total cost associated with ANY ineligible services, entities, or uses included in your monthly charges. The following represent some common ways in which eligible and ineligible costs are bundled together, and how you can go about deducting the ineligible costs.

- **Eligible services bundled with ineligible services:** While you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services. If the eligible and ineligible services were purchased together at a special "bundled" price, the service provider must also indicate the prices associated with each service if sold separately and the "price reduction" applied to the bundle. The applicant will use this reduced price when requesting universal service discounts on the eligible service. For example, if a provider offers to sell a school an eligible service for \$10.00 and an ineligible service for \$20.00, but also offers them as a bundle for \$24.00, this would indicate that the provider is offering a \$6.00, or 20%, price reduction. Therefore, the school could treat $\$10.00 - 20\% = \8.00 as eligible for universal service support.

Item (23), Column A: Estimate your total monthly cost for this service. If the cost of service fluctuates from month to month, you might use the average of past bills to estimate the monthly cost.

If you expect to pay a non-recurring charge in multiple installments over the funding year, you should either amortize this charge in Columns A-E or include the full amount of this charge in Columns F-H. **DO NOT** include this amount under both recurring and non-recurring charges. If you amortize this charge in Columns A-E, you will not be eligible for discounts on the non-recurring services provided after June 30 of the funding year.

Item (23), Column B: Enter the total cost associated with ANY ineligible services, entities, or uses included in your monthly charges. The following represent some common ways in which eligible and ineligible costs are bundled together, and how you can go about deducting the ineligible costs.

- **Eligible services bundled with ineligible services:** While you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services. If the eligible and ineligible services were purchased together at a special "bundled" price, the service provider must also indicate the prices associated with each service if sold separately and the "price reduction" applied to the bundle. The applicant will use this reduced price when requesting universal service discounts on the eligible service. For example, if a provider offers to sell a school an eligible service for \$10.00 and an ineligible service for \$20.00, but also offers them as a bundle for \$24.00, this would indicate that the provider is offering a \$6.00, or 20%, price reduction. Therefore, the school could treat $\$10.00 - 20\% = \8.00 as eligible for universal service support.
- **Services shared by eligible and ineligible entities:** When you share a service with an ineligible entity, the provider may receive reimbursement only for that portion of the service that eligible entities are receiving. To help auditors confirm that this rule is being observed, you must keep and retain careful records of how you have allocated the costs of shared services and facilities among eligible and ineligible entities. You should maintain these records on some reasonable basis, consistent with any measures that may be established by the FCC, the SLD, or state commissions.
- **Bundled services from an Internet service provider:** You may receive discounts on access to the Internet but not on separate charges for particular proprietary content, other information services, or a package including content and conduit. The only exception is when the bundled package includes minimal content and provides a more cost-effective means of securing access to the Internet than other non-content alternatives. Thus, if a service provider bundles Internet access with a package of content that is available to all customers free of charge, the entire price of that bundle will be eligible for support. However, if the service provider a) does not offer an access-only service, and b) offers Internet users access to its proprietary content for a price, then you may treat the difference

NETWORK TECHNICAL SUPPORT SERVICES AGREEMENT

THIS NETWORK TECHNICAL SUPPORT SERVICES AGREEMENT ("Agreement") is made on January 17, 2001, by and between the Fairfield County School District ("The District"), with offices at 1226 US Hwy 321 ByPass, Winnsboro, South Carolina 29180, and Diversified Computer Solutions, Inc. ("DCS"), with offices at 115 Atrium Way, Suite 125, Columbia, South Carolina 29223.

In consideration of the mutual promises contained herein, The District engages DCS to perform the work described below and DCS accepts such engagement, under the following terms and conditions.

1. **TERM.** This agreement will commence on July 1, 2001, and continue through June 30, 2002, unless terminated earlier, or extended, as provided herein.
2. **SCOPE OF WORK.** The objective of this Agreement is to provide The District with networked computer systems maintenance and on-site technical support in order to ensure efficient systems operation as nearly 100% of the time as is possible, and at a manageable cost. During the term of this agreement, DCS will perform these support services for the networked systems at The District both on-site and remotely from other locations, as requested by The District. All of the parts, components, and services provided to The District under the terms of this Agreement are billable if authorized by The District and will include, but not be limited to, on-site technical support including replacement, installation, upgrade and maintenance of the following:
 - a. Wireless LAN antennas; tape backup systems for server; battery backup for eligible components; wireless LAN broadband amplifiers; cabinets containing eligible equipment; channel service unit; data service unit; client access licenses for a network operating system; conduit and raceway for eligible cabling; connectors; eligible servers; eligible services installation documentation; edge devices; network interface card for eligible components; hubs; switches; media converters; monitors for eligible servers; router and router operating system used for eligible purposes; e-mail server software; system improvements and upgrades to eligible services; transceivers; eligible internal wiring; eligible wireless LAN components; professional services to include design and engineering costs coincident with the installation of eligible equipment or services, installation of eligible services, maintenance for eligible services or products, project management costs associated with the overall management of the installation and initial operation of eligible products and services, basic instruction on the use of eligible equipment, coincident with and directly associated with the installation of such equipment; configuration of eligible hardware

**Network Technical Support Agreement
Diversified Computer Solutions, Inc.**

associated with the installation of such equipment; configuration of eligible hardware and software, shipping charges for the delivery of eligible products or services; sales taxes for eligible products; costs of travel to and from a work site for eligible services.

- b. DCS will keep records segregated as to Non-E-rate eligible services and E-rate eligible services and will bill separately for these two distinctly different types of service. This Agreement is contingent upon The District receiving a funding commitment letter from the Schools and Libraries Division (SLD). The District may require DCS to begin work prior to notification from the SLD or to begin work after notification from the SLD. In any case, The District is responsible for all costs associated for any and all work performed by DCS resulting from this Agreement. The District is also responsible for ensuring the accuracy of all information sent to the SLD.
 - c. In urgent situations, DCS will respond to The District within 4 business hours of telephone notification of a system shutdown condition.
3. STATUS OF PARTIES. DCS is an independent contractor and not an employee, agent, or partner of or a joint venture with The District.
4. SUBCONTRACTING OR ASSIGNMENT. DCS will not subcontract or assign the work undertaken or any of its obligations or rights under this agreement without The District's prior written consent.
5. COMPENSATION
- a. **Hourly Fees.** The District will pay DCS's hourly service fees under the terms of the South Carolina Temporary IT Personnel Contract Number 99-S1548-A5745 and the associated Scope of Work for that contract.
 - b. If, during the term of this Agreement, it becomes appropriate to consider (1) an extension of the Term of the Agreement, (2) a renewal of the Agreement, or any other change or amendment to the Agreement; an Addendum to the Agreement may be executed by agreement and acceptance of both parties hereto.
 - c. All maintenance fix, replace, upgrade or other components provided by DCS will be priced at DCS's cost plus ten percent (10.0%) plus freight (if any) and Retail Sales Tax.
 - d. The warranty on system components is provided by the manufacturer, and not by DCS. In case of a component failure, then DCS will assist The District in claiming fulfillment of the warranty by the manufacturer. DCS will bill The District's account for time and parts used, and credit The District's account for dollars and replacement parts received from the manufacturer.

**Network Technical Support Agreement
Diversified Computer Solutions, Inc.**

- e. The parties agree to jointly review the Agreement during the 30 days prior to each anniversary date. Renewals (up to five years) may be negotiated and executed by agreement and acceptance of both parties hereto.
6. **INVOICING AND PAYMENT.** DCS will invoice The District weekly. Invoices will itemize the hours billed per person (summarizing the tasks performed) and the expenses incurred. Invoices will be accompanied by such back-up documentation as The District may reasonably require. The District will pay all properly submitted invoices within 30 days of the invoice date.
7. **CONFIDENTIALITY.** DCS acknowledges and agrees that all information (whether verbal or written) about The District and The District's business disclosed to DCS by The District or learned by DCS during the performance of the work hereunder is "Confidential Information." Such Confidential Information is The District's sole property and this Agreement does not give DCS title or any rights to or any interest in the same. DCS agrees that it will disclose the Confidential Information only to those of its employees who have a need to know it for purposes of performing this Agreement and who have agreed to hold it in confidence as provided herein; will take such steps as are necessary to prevent any unauthorized disclosure of the Confidential Information; will not produce, sell, offer for sale or otherwise commercially exploit or make any use whatsoever of the Confidential Information (except to perform this Agreement) without The District's prior written consent; and will promptly deliver the Confidential Information and all copies thereof to The District at any time upon The District's written request. The foregoing confidentiality obligations do not extend to any information which was known to DCS and in its possession prior to commencing work hereunder (as evidenced by DCS's prior written records); is proven to have been in the public domain at the time of disclosure by The District; is proven to have been rightfully obtained hereafter from a third party which had no obligation of confidentiality to The District with respect thereto; or is required to be produced by governmental laws or regulations or judicial orders, provided that DCS notifies The District promptly in writing that such production has been requested and takes all reasonable steps to protect any information produced from public disclosure.
8. **DCS'S WARRANTIES.** DCS warrants that it has special expertise in the design, configuration, installation, maintenance and management of networked information systems and that it will perform the work hereby undertaken with its best efforts, in accordance with customary and generally accepted professional standards and practices, and in compliance with all applicable federal, state and local laws, regulations and orders.

**Network Technical Support Agreement
Diversified Computer Solutions, Inc.**

9. **CONTACTS.** The District's contact person(s) for this work will be Barry Wright and DCS's Account Executive will be Toni Kelly. These persons will be responsible for all communications, decisions and approvals in connection with the work.
10. **INSURANCE.** During the term of this agreement, DCS will maintain, at its own expense, the following insurance coverage, as evidenced by insurance certificates provided to The District on request: statutory worker's compensation and employer's liability; comprehensive general public liability in the amount of \$1 million bodily injury/property damage per occurrence; and automotive liability in the amount of \$1 million bodily injury/property damage per occurrence.
11. **FORCE MAJEURE.** DCS will not be liable for any delays in performance hereunder due to events beyond its reasonable control (including, without limitation, acts of God, fire, flood, acts of war, acts of sovereign governments, and labor disputes) provided that it gives prompt notice of the nature and extent of the delay to The District, and further provided, that if such event continues for a period of more than 5 days, The District may terminate this Agreement upon written notice to DCS, without further obligation to DCS hereunder.
12. **TERMINATION.** If either party breaches any warranty hereunder or any provision of this Agreement, the other party may terminate this Agreement upon written notice, without further obligation hereunder, and/or may pursue any remedies available to it hereunder or at law or equity.
13. **OTHER TERMINATION.** This Agreement may be terminated by either party upon sixty (60) days written notice to the parties at their respective addresses as stated above. The District agrees to pay all sums owed through the date of termination and DCS agrees to furnish all service through the date of termination. All other provisions of the Agreement not in conflict with this provision shall remain in full force and effect.
14. **NOTICES.** Except as provided in Section 2 (regarding notification of a request for service and confirmation of the dispatch of services), all notices and required communications hereunder will be in writing and will be deemed given when delivered to the designated contact persons in person or 3 days after deposit in the United States mail, postage prepaid, addressed to the addresses first stated above or such other addresses as they have designated.
15. **ENTIRE AGREEMENT, AMENDMENTS.** This Agreement contains the entire agreement between the parties and supersedes any prior agreements (whether verbal or written) between them concerning the matters covered. In the event of a conflict between this Agreement and any School purchase order or any other document or form of the parties, this Agreement will

**Network Technical Support Agreement
Diversified Computer Solutions, Inc.**

supersede and govern. This Agreement may not be amended or modified except by a written amendment executed by both parties.

16. **WAIVER.** The failure of either party at any time to exercise any of its rights under the Agreement will not be deemed to be a waiver of such rights and will not in any way prevent such party from subsequently asserting or exercising such rights or any other rights hereunder.
17. **GOVERNING LAW.** This Agreement will be governed, construed and enforced in accordance with the laws of the State of South Carolina, without recourse to the conflicts of laws provisions thereof.
18. **SEVERABILITY.** If any provision of the Agreement is or becomes invalid, in whole or part, under any applicable law or regulation, it will be deemed stricken and the rest of the Agreement will remain in full forces and effect.
19. **PARTIES.** This Agreement is binding on The District and DCS and their respective directors, officers, employees, agents, successors and any duly authorized assigns.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement in duplicate as of the date first written above.

**FAIRFIELD COUNTY SCHOOL
DISTRICT**

By: Scott M. Allan
Name: Scott M. Allan
Title: Deputy Supt. of Finance & Op.
Date: 1-17-01

**DIVERSIFIED COMPUTER
SOLUTIONS, INC.**

By: Toni W. Kelly
Name: Toni W. Kelly
Title: Branch President for S. C.
Date: January 17, 2001

FUNDING COMMITMENT REPORT

Service Provider Name: Diversified Computer Solutions, Inc.
Service Provider Identification Number: 143005276

Funding Request Number: 605024
Form 471 Application Number: 248519
Form 470 Application Number: 477980000329851
Name of 471 Applicant: FAIRFIELD COUNTY SCHOOL DIST
Applicant Street Address: 1226 US Highway 321 ByPass
Applicant City: WINNSBORO
Applicant State: SC
Applicant Zip: 29180
Entity Number: 127143
Name of Contact Person: Barry Wright
Preferred Mode of Contact: EMAIL
Contact Information: bwright@fairfield.k12.sc.us
Funding Year: 07/01/2001 - 06/30/2002
Funding Status: Funded
Contract Number: 99-S1548-A5745
Services Ordered: Internal Connections
Billing Account Number: N/A
Allowable Vendor Selection/Contract Date: 01/10/2001
Contract Award Date: 01/16/2001
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Total Estimated Monthly Recurring Charges: \$13990.00
Portion of Total Estimated Monthly Recurring Charges that is Ineligible: \$0.00
Eligible Monthly Pre-Discount Amount for Recurring Charges: \$13990.00
Number of Months Recurring Service Provided in Program Year: 12
Annual Pre-Discount Amount for Eligible Recurring Services: \$167880.00
Annual Non-Recurring Charges: \$0.00
Portion of Annual Non-Recurring Charges that is Ineligible: \$0.00
Annual Eligible Pre-Discount Amount for Non-Recurring Charges: \$0.00
Total Program Year Pre-Discount Amount: \$167880.00
Applicant's Approved Discount Percentage: 86
Funding Commitment Decision: \$144376.80 - FRN approved as submitted
Technology Plan Approval Status: Approved
Wave Number: 015
Applicant Letter Date: 03/15/2002